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OFFICE OF CONSUMER AFFAIRS AND BUSINESS REGULATION

**DEPARTMENT OF
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September 29, 2000

Kenneth W. Salinger, Esq.

Palmer & Dodge, LLP

One Beacon Street

Boston, Massachusetts 02108-3190

Re: D.T.E. 99-99 - Emergency Petition by AT&T Wireless for One Additional
781-NXX Code

Dear Mr. Salinger:

I. Introduction

On September 7, 2000, AT&T Wireless Services ("ATT-W") filed with the Department of Telecommunications and Energy ("Department") an Emergency Petition for One Additional 781-NXX Code ("Petition"). Accompanying ATT-W's Petition was an Affidavit of Terry Elison in Support of ATT-W's Petition ("Elison Affidavit") and a Motion for Protective Treatment of the Elison Affidavit ("Motion for Protective Treatment"). On September 11, 2000, the Department granted ATT-W's Motion for Protective Treatment of the Elison Affidavit. Also on September 11, 2000, the Department, by Hearing Officer Memorandum, requested comments on ATT-W's Petition, specifically requesting comment on whether ATT-W, or any carrier seeking codes outside of the rationing process, should be required to return any priority list codes assigned to them before receiving emergency codes. On September 12, 2000, ATT-W submitted a supplement ("ATT-W Supplement") to its Petition, informing the Department that ATT-W intends to return the priority list code assigned to it for March 2001 in the 781 NPA. On September 14, 2000, Verizon-Massachusetts ("Verizon") filed comments supporting the acceleration of ATT-W's receipt of the priority list

code, suggesting that carriers should be able to expedite the receipt of priority list codes by demonstrating imminent exhaust, as is the practice in the 508 and 617 NPAs (Verizon Comments at 1). Verizon further suggested that the Department should not require carriers to relinquish priority list codes allocated for a different rate center than that in which they seek the expedited request (id.).

On September 19, 2000, RCN-BecoCom, L.L.C. ("RCN") filed reply comments suggesting that the Department should grant petitions for emergency codes outside the rationing process when the petitioning carrier can demonstrate imminent exhaust in the rate center for which it seeks the emergency code (RCN Reply Comments at 1). RCN also advised that carriers which have priority list codes reserved for them in the same rate centers for which they seek emergency codes should be required to forfeit the priority list code, unless the petitioning carrier can "...demonstrate utilization to warrant the issuance of two codes in the same rate center" (id.). RCN did not provide guidance on what level of utilization might justify permitting a carrier to keep a priority list code in the same rate center for which it has petitioned and been granted an emergency code outside of the rationing process.

Also on September 19, 2000, AT&T Communications of New England, Inc. ("ATT") filed reply comments in support of ATT-W's petition, in which it argued that a carrier's request for an emergency code in the same rate center and NPA for which it already has a priority list code in reserve should be treated by the Department as a request to accelerate the assignment of the priority list code (ATT Reply Comments at 2). ATT argues that the difference between the acceleration of a priority list assignment and the immediate assignment of a new NXX subject to the return of a priority list code is not a substantive difference, but only a difference of nomenclature (id.). ATT further argues that a carrier which requests an emergency code for the same rate center and NPA for which it already has a priority list code in reserve should not presumptively be required to return that priority list code as a condition of being granted the additional emergency code, but that such a carrier should be required to meet a heightened burden in establishing its need for relief (id.).

II. Standard of Review

ATT-W's Petition was filed pursuant to the authority granted to the Department by the Federal Communications Commission ("FCC") to direct NeuStar, Inc., as the North American Numbering Plan Administrator ("NeuStar"), to assign NXX codes to a carrier

outside the rationing process. In re Massachusetts Department of Telecommunications and Energy's Petition for Waiver of Section 52.19 to Implement Various Area Code Conservation Methods in the 508, 617, 781 and 978 Area Codes, Order, CC Docket No. 99-200, 14 FCC Rcd 17447 (1999) ("Massachusetts Delegation Order"). In the Massachusetts Delegation Order at ¶ 38, the FCC granted the Department the authority "to hear and address claims of carriers claiming that they do not, or in the future will not, have any line numbers remaining in their NXX codes, and will be unable to serve customers if they cannot obtain an NXX code, or that they are using or will have to use extraordinary and unreasonably costly measures to provide service." The FCC explained that this authority is meant "to ensure that carriers in dire need of numbering resources can obtain the numbering resources necessary to continue to provide service to their prospective customers, if the rationing plan will not ensure that the carrier will have adequate and timely access to numbering resources." Id. Upon a determination that such relief is necessary, the Department may direct NANPA to assign codes to a carrier outside the rationing plan currently in place in an area code. Id. To make its determination, the Department may request "whatever information [it] deems necessary to evaluate a carrier's request . . ." including business plans, information on new service requests that the carrier could not accommodate because of its lack of numbering resources, historical growth rates, and extraordinary measures the carrier has taken to obtain numbering resources. Id.

The Department interprets the FCC's Massachusetts Delegation Order as requiring that we address the following issues in deciding whether to grant a request for additional codes outside of the current rationing plan in place in an area code: (1) whether a carrier is ready from a technical and marketing standpoint to provide service to prospective customers; (2) whether the current rationing plan does not allow for adequate and timely access to NXX codes to serve these customers; and (3) whether the carrier has made reasonable attempts outside of the rationing process to obtain NXX codes but has been unsuccessful. If a carrier meets these criteria, the Department will grant the request. Letter Order re: MediaOne's Request for Additional Exchange Codes Outside of the Rationing Plan, D.T.E. 99-99, at 3 (February 11, 2000) ("MediaOne Letter Order").

III. Discussion

Because ATT-W has agreed to voluntarily return its March 2001 priority list code for the 781 NPA (ATT-W Supplement at 1), it is no longer necessary for the Department to determine whether ATT-W must return this priority list code as a condition of Department approval of ATT-W's Petition. With regard to future petitions by carriers for codes outside of the rationing process, the Department adopts a rebuttable presumption that carriers petitioning for codes outside the rationing process for a rate center and NPA

for which they already have a priority list code in reserve must return the priority list code as a condition of Department approval. Carriers seeking to rebut the presumption and retain the priority list codes will be faced with a heightened burden in demonstrating their need for the additional code, and will not be able to rely solely on the three-pronged test the Department applied in the MediaOne Letter Order.

We turn to the merits of ATT-W's Petition. The Department finds that ATT-W has met the three criteria established in the MediaOne Letter Order for assignment of an additional NXX code outside the rationing plan. ATT-W has shown that it is ready from a technical and marketing standpoint to provide service to its prospective customers in the rate center in which it seeks the NXX code, so long as ATT-W has access to sufficient numbering resources (Elison Affidavit at ¶ 3). Further, ATT-W has shown that ATT-W is in danger of running out of numbers for customers in the 781 NPA in the very near term and that the current rationing plan does not provide for adequate and timely access to NXX codes to serve those customers (Elison Affidavit at ¶¶ 4-8). Finally, ATT-W has demonstrated that ATT-W has made reasonable attempts outside of the rationing process to obtain codes but has been unsuccessful (ATT-W Supplement at 1). No party has opposed ATT-W's Petition.

IV. Order

Accordingly, the Department directs NeuStar to assign one NXX code from the 781 NPA to ATT-W within two business days of the date of this Order, for activation in accordance with existing industry procedures.

By Order of the Department,

James Connelly, Chairman

W. Robert Keating, Commissioner

Paul B. Vasington, Commissioner

Eugene J. Sullivan, Commissioner

Deirdre K. Manning, Commissioner